BENJAMIN K LUNCH, Bar No. 246015
WAN YAN LING, Bar No. 297029
NEYHART, ANDERSON, FLYNN & GROSBOLL
369 Pine Street, Suite 800
San Francisco, CA 94104
Tel: (415) 677-9440
Fax: (415) 677-9445
Email: blunch@neyhartlaw.com
wling@neyhartlaw.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(San Jose Division)

SACRAMENTO AREA ELECTRICAL WORKERS HEALTH & WELFARE TRUST; SACRAMENTO AREA ELECTRICAL WORKERS PENSION TRUST; SACRAMENTO AREA ELECTRICAL WORKERS JOINT APPRENTICESHIP & TRAINING TRUST; SACRAMENTO AREA ELECTRICAL WORKERS LABOR MANAGEMENT COOPERATION COMMITTEE FUND; SACRAMENTO AREA ELECTRICAL WORKERS CONTRACT ADMINISTRATION FUND; BOB WARD, as trustee of the above trusts except for the SACRAMENTO AREA ELECTRICAL WORKERS PENSION TRUST; JEFF STORY, as trustee of the SACRAMENTO AREA ELECTRICAL WORKERS PENSION TRUST; NATIONAL ELECTRICAL BENEFIT FUND; and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 340

Plaintiffs,

v.

CROSS ELECTRIC and DENNIS DAMIEN CROSS,

Defendants.

Case No.

COMPLAINT

Plaintiffs allege:

I.

JURISDICTION AND PARTIES

1. Jurisdiction. This is an action to collect unpaid contributions to multi-employer benefit plans pursuant to a Collective Bargaining Agreement. It is also an action to enforce the terms of a multi-employer benefit Trust Agreement, specifically the terms requiring an employer to make contributions to the Plaintiff. Jurisdiction is pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a), (e) and (g), 29 U.S.C. § 1145 and the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185.

2. Venue. Venue is appropriate in this District as the plaintiff plans are administered in this District (Santa Clara County), and the breach took place in this District; 29 U.S.C. § 1132(e)(2).

3. Parties. Plaintiff INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 340 (hereafter referred to as the "Union" or "IBEW Local 340") is a labor union and the collective bargaining agent for electricians and apprentice electricians employed by Defendant.

4. Plaintiffs SACRAMENTO AREA ELECTRICAL WORKERS HEALTH & WELFARE TRUST ("Health & Welfare Trust"), SACRAMENTO AREA ELECTRICAL WORKERS PENSION TRUST ("Pension Trust"), and SACRAMENTO AREA ELECTRICAL WORKERS JOINT APPRENTICESHIP & TRAINING TRUST ("JATC ") will be collectively referred to as the "Trusts." Each of the Trusts is a multi-employer employee benefit plan pursuant to ERISA, 29 U.S.C. § 1002(3), (37) and 29 U.S.C. § 1132(d)(1) and jointly trusteed employee benefit trust pursuant to the LMRA, 29 U.S.C. § 186(c)(5).

5. Plaintiff SACRAMENTO AREA ELECTRICAL WORKERS CONTRACT ADMINISTRATION FUND ("Contract Administration Fund") is a further beneficiary of the

collective bargaining agreement[1] that has been entered into by the Sacramento Electrical Contractors Association and IBEW Local 340.

6. Plaintiffs NATIONAL ELECTRICAL BENEFIT FUND ("NEBF") and SACRAMENTO AREA ELECTRICAL WORKERS LABOR MANAGEMENT COOPERATION COMMITTEE FUND ("LMCC") are jointly managed funds pursuant to the Labor Management Cooperation Act of 1978, 29 U.S.C. § 141 et seq.

7. Plaintiffs IBEW Local 340, Contract Administration Fund, and NEBF will be collectively referred to as the "Related Entities."

8. Plaintiff BOB WARD, is a trustee and fiduciary of the Trusts set forth in Paragraph 4, except the Pension Trust, and is also the Business Manager of the Union. As such, Mr. Ward has the duty, jointly exercised with the other Trustees of those funds, to administer the Trusts for the exclusive benefit of the covered employees in accordance with the Labor Management Relations Act ("LMRA") § 302(c)(5), 29 U.S.C. § 186(c)(5), ERISA, and the terms of each of the Trusts' written Trust Agreements and the CBA. That fiduciary duty includes the collection of unpaid employer contributions and related losses.

9. Plaintiff JEFF STORY is a trustee and fiduciary of the Pension Trust. As such, Mr. Story has the duty, jointly exercised with the other Trustees of those funds, to administer the Trusts for the exclusive benefit of the covered employees in accordance with the Labor Management Relations Act ("LMRA") § 302(c)(5), 29 U.S.C. § 186(c)(5), ERISA, and the terms of each of the Trusts' written Trust Agreements and the CBA. That fiduciary duty includes the collection of unpaid employer contributions and related losses.

10. Upon information and belief, Defendant CROSS ELECTRIC is a sole ownership operating under California Contractor's State License # 868187.

[1] Labeled the "Inside Wireman's Agreement."

11. Upon information and belief, Defendant DENNIS DAMIEN CROSS is the sole owner of CROSS ELECTRIC.

12. Defendants CROSS ELECTRIC and DENNIS DAMIEN CROSS will be jointly referred to as “Defendants.”

13. Defendants are engaged in the electrical wiring business in and around Colusa County, California and as such have been an employer “engaged in an industry or activity affecting commerce” within the meaning of 29 U.S.C. § 152 and 29 U.S.C. §§ 1002-1003.

II.

FACTS

14. A Collective Bargaining Agreement labeled the “Inside Wireman’s Agreement” (hereinafter referred to as the “CBA”) has been entered into by the Sacramento Electrical Contractors Association (“SECA”) and IBEW Local 340.

15. Defendants are signatory to the CBA and are therefore bound by all provisions contained in the most recent version of the CBA. A true and correct copy of the Letter of Assent signed by Defendants is attached hereto as “**Exhibit A**.”

16. Any employer who agrees to be bound to the CBA also agrees to be bound to the applicable Trust Agreement(s).

17. The terms of the CBA require Defendants to submit timely monthly transmittal reports and contributions to the Trusts and Related Entities for fringe benefits for covered employees.

18. Under both the CBA and the Trust Agreement(s), an employer who fails to submit timely monthly fringe benefit contributions to the Trusts and Related Entities is liable to the Trusts and Related Entities for all unpaid contributions, liquidated damages on the unpaid principal, interest

on the delinquent amount accrued and liquidated damages, and attorneys' fees and collection costs. See also, 29 U.S.C. § 1132(g).

19. Defendants have failed to pay the required contributions to the Trusts and Related Entities during the relevant period of the statute of limitations pursuant to the appropriate CBA and/or Trust Agreement(s). See also, 29 U.S.C. § 1132(g). Specifically, Defendants have failed to pay the required contributions to the Trust and Related Entities for the period August 2016 through January 2017 in the amount of at least $33,321.67.

20. Defendants also owe liquidated damages for the untimely payment of monthly fringe benefit contributions for the period May 2016 through January 2017, in the amount of at least $3,701.54.

21. Defendants further owe interest on the outstanding contributions and liquidated damages.

III.

FIRST CLAIM

(ERISA - 29 U.S.C. § 1145)

22. Plaintiffs incorporate by reference and reallege the paragraphs above as if set out in full.

23. Jurisdiction. This is an action to collect unpaid contributions found owing to a multi-employer benefit plan pursuant to the terms of the Trust Agreement(s) and the Collective Bargaining Agreement. Jurisdiction is pursuant to ERISA, 29 U.S.C. §§ 1132(a), (e) and (g) and § 1145.

24. Defendants' actions constitute a failure of an employer to make contributions to a multi-employer plan, as well as a breach of fiduciary duty owed pursuant to 29 U.S.C. § 1145.

25. Plaintiffs are entitled to judgment for all unpaid contributions, liquidated damages, prejudgment interest, and reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g)(2).

IV.

SECOND CLAIM

(LMRA - 29 U.S.C. § 185)

26. Plaintiffs incorporate by reference and reallege the paragraphs above as if set out in full.

27. Jurisdiction. This is an action to enforce a collective bargaining agreement pursuant to 29 U.S.C. § 185(a).

28. Defendants' failure to pay contributions owing breached the CBA with IBEW Local 340 to the detriment of Plaintiffs. Plaintiffs are entitled to damages, liquidated damages, interest, attorneys' fees and costs pursuant to the CBA and Trust Agreement(s).

29. Plaintiffs are entitled to pursue this claim as third party beneficiaries to the Trust Agreement(s). *See Schneider Moving & Storage Co. v. Robbins, et al.* (1984) 466 U.S. 364, and *Local 340 Apprenticeship and Training Trust v. Babcock & Wilcox* (9th Cir. 2005) 396 F.3d 1056.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendant, jointly and severally, as follows:

1. For unpaid contributions for the months of August 2016 through January 2017 in the amount of at least $29,620.13, plus further amounts according to proof;

2. For liquidated damages as a result of Defendant' breach of the CBA and applicable Trust Agreement(s) in the amount of at least $3,701.54, plus further amounts according to proof;

3. For prejudgment interest according to proof;

4. For reasonable attorneys fees and costs of suit and any further amounts according to proof;

5. For such equitable relief as this court deems just and proper;

6. For such other and further relief as this court deems just and proper.

Dated: March 1, 2017

Respectfully submitted,

/s/ Wan Yan Ling

Wan Yan Ling
NEYHART, ANDERSON, FLYNN & GROSBOLL
Attorneys for Plaintiff